

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JENNIFER ECKHART,

Plaintiff,

v.

FOX NEWS NETWORK, LLC, and ED HENRY, in his
individual and professional capacities,

Defendants.

Case No. 20-CV-5593 (RA)

**DECLARATION OF CATHERINE M. FOTI IN SUPPORT OF DEFENDANT ED
HENRY'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT
AND FOR A MORE DEFINITE STATEMENT**

CATHERINE M. FOTI, declares, pursuant to 28 U.S.C. § 1746 and Local Civil Rule 1.9, under penalty of perjury, the following to be true and correct:

1. I am a principal of the firm Morvillo Abramowitz Grand Iason & Anello P.C., counsel for Defendant Edward "Ed" Henry in the above-captioned action. I submit this Declaration, along with the accompanying Memorandum of Law in support of Mr. Henry's Motion to Dismiss Plaintiff Jennifer Eckhart's Second Amended Complaint, pursuant to FRCP 12(b)(6), and for a More Definite Statement, pursuant to FRCP 12(e). I am familiar with the facts and circumstances set forth herein.

2. Ed Henry is a television and print journalist. He started his broadcasting career as a political analyst for a local Washington, D.C. radio station, WMAL, and quickly moved to work for CNN where he began covering the White House in 2006. In 2011, Mr. Henry left CNN to become the Chief White House Correspondent for Fox News. He became an occasional host

for *Fox and Friends Weekend* in 2016 and then a regular host of that show in 2016. In December, 2019, he became the co-host of *America's Newsroom*, a position he held until Fox News terminated him on July 1, 2020. Throughout his employment at Fox News, Mr. Henry worked in a separate division from Fox Business Network.

3. On December 18, 2013, Jennifer Eckhart commented on a tweet Mr. Henry had issued earlier in the day about a movie. Attached hereto as Exhibit A is a true and correct copy of public tweets from Ed Henry and Jennifer Eckhart, dated December 18, 2013. Prior to December 18, 2013, Mr. Henry had never met Eckhart and did not know who she was. Only after Eckhart commented on his tweet did Mr. Henry learn that Eckhart worked for Fox Business and begin following Eckhart on Twitter.

4. Attached hereto as Exhibit B is a true and correct copy of email correspondence between Ed Henry and Jennifer Eckhart, dated December 18, 2013, regarding the exchange of tweets referenced in paragraph 3 above. This email was sent from Mr. Henry's Fox News email account, to which Mr. Henry no longer has access. Mr. Henry, however, does have a hardcopy printout of that email exchange. Exhibit B is a true and correct copy of this printout.

5. According to the Second Amended Complaint, one day when Mr. Henry was in Fox News' New York office, he asked Eckhart to take a picture with him. *See* SAC ¶ 24. Although Mr. Henry disagrees with the sequence of events leading up to the picture he took with Eckhart, he agrees that they did take a picture and recalls that Eckhart then posted it publicly on Twitter.

6. Attached hereto as Exhibit C is a true and correct copy of email correspondence between Ed Henry and Jennifer Eckhart, dated June 13, 2014, regarding the exchange of the picture referenced in paragraph 5 above. This email also was sent from Mr. Henry's Fox News

email account, to which he no longer has access. Exhibit C is a true and correct copy of a printout of that email exchange.

7. Attached hereto as Exhibit D is a true and correct copy of email correspondence between Ed Henry and Jennifer Eckhart, dated October 21, 2015.

8. Attached hereto as Exhibit E is a true and correct copy of a message, dated January 2, 2016, from Jennifer Eckhart to Ed Henry sending him a “Playlist” of songs via Dropbox. Included in this “Playlist” are songs like “Coffee (Fucking)” (which features the lyrics “Fucking in the morning . . . I’ve never felt comfortable like this . . . Sweet dreams turn into fucking in the morning”) and “Cockiness (Love It When You Eat It)” (which features the lyrics “I want you to be my sex slave . . . Set my whole body on fire”).

9. Attached hereto as Exhibit F is a true and correct copy of email correspondence Jennifer Eckhart sent to Ed Henry, dated January 13, 2016, with a link to a picture of a man’s tattoo, as well as a screenshot from that webpage.

10. Attached hereto as Exhibits G-U are true and correct copies of photographs Jennifer Eckhart sent Ed Henry in 2017. In exhibits I, J, M, and Q, Plaintiff’s intimate parts have been purposely obscured.

Dated: New York, New York
October 19, 2020

/s/ Catherine M. Foti
CATHERINE M. FOTI